

FILED
U.S. DISTRICT COURT
2011 APR 12 PM 3:30
S.D. OF N.Y. N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COURT FILE NO.: CV -

11 CIV 02497

JUDGE SEIBEL

Ivette LEBRON,

Plaintiff,

v.

Portfolio Recovery Associates, LLC;
and DOES 1-10 inclusive

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).
2. This action arises out of Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA").
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendants transact business in this District.

PARTIES

4. Plaintiff, Ivette LEBRON, is a natural person who resides in Yonkers, County of Westchester, State of New York, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
5. Defendant, Portfolio Recovery Associates, LLC is a collection agency operating

from an office located at 120 Corporate Boulevard, Norfolk, Virginia 23502 and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6). Defendant is a collection agency that in the ordinary course of business, regularly, on behalf of others, engages in debt collection.

6. Does 1-10 (the “Collectors”) are individual collectors employed by Defendant, and whose identities are currently unknown to the Plaintiff. One or more of the Collectors may be joined once their identities are disclosed through discovery.

FACTUAL ALLEGATIONS

A. Debt

7. Sometime in 1997-1998, Plaintiff is alleged to have incurred a financial obligation that was primarily for personal, family or household purposes and is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5).
8. Sometime thereafter, the alleged debt was consigned, placed or otherwise transferred to Defendant for collection from the Plaintiff.
9. The alleged contract which underlies this debt went into default sometime around 1998 or 1999;
10. Plaintiff has not made any payment on this alleged debt to the Defendant, to the original creditor, or to any other person or entity for at least six years before Defendant commenced collecting on this debt.

11. Defendant attempted to collect the Debt and, as such engaged in “communications” as that term is defined in 15 U.S.C. § 1692a(2).

B. Defendant Engages in Harassment and Abusive Tactics.

12. Sometime in 2010, Defendant commenced collecting on this stale debt while knowing that it was a time-barred action under the applicable New York six-year statute of limitations on contract actions.

13. Defendant began to repeatedly call Plaintiff in an attempt to embarrass shame and humiliate the Plaintiff into paying the debt.

14. Defendant called Plaintiff repeatedly and continuously, almost every other day.

15. Defendants caused Plaintiff’s telephone to ring with such frequency as to be unreasonable and constitute harassment to Plaintiff under the circumstances.

C. Plaintiff Suffered Actual Damages

16. Plaintiff has suffered and continues to suffer actual damages as a result of the Defendant’s unlawful conduct.

17. As a direct consequence of the Defendant’s acts, practices and conduct, the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration, embarrassment, headaches, loss of appetite, and shortness of breath.

18.The Defendants' conduct was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

COUNT I
VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692 et seq.

19.Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

20.Defendant's conduct violated the FDCPA in multiples ways, including but not limited to, the following:

21.By causing the phone to ring and engaging Plaintiff in telephone conversations repeatedly in violation of 15 U.S.C. § 1692(d)(5).

22.Defendant's conduct violated 15 U.S.C. § 1692e(5) in that Defendant threatened to take action that cannot legally be taken or that is not intended to be taken.

23.Defendant's conduct violated 15 U.S.C. § 1692d(10) in that Defendant employed false and deceptive means to collect a debt.

24. Defendant's conduct violated 15 U.S.C. § 1692 (F) in that Defendant used unfair or unconscionable means to collect or attempt to collect a debt.

25.Collecting amount not authorized by agreement or expressly not permitted by law in violation of 15 U.S.C. § 1692(f)(1)

26.Contacting the Plaintiff at a place and during a time known to be inconvenient for the plaintiff in violation of 15 U.S.C. § 1692 c (a)(1).

27. Engaging in conduct the natural consequences of which is to harass, oppress or abuse Plaintiff in connection with the debt plaintiff does not owe in violation of 15 U.S.C. § 1692 (d);

TRIAL BY JURY

28. Plaintiff is entitled to and hereby respectfully demands a trial by jury on all issues so triable. US Const. amend. 7. Fed.R.Civ.P. 38.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

- for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against Defendant and for Plaintiff;
- for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against Defendant and for Plaintiff;
- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against Defendant and for Plaintiff; and
- for such other and further relief as may be just and proper.

Dated: March 25, 2011

Respectfully submitted,


Stanley Smotritsky, Esq.
SMOTRITSKY & SPEKTOR, PLLC
Attorneys for Plaintiff
1928 Kings Highway, 3rd Floor
Brooklyn, New York 11229
Telephone: (718) 554-3630
Facsimile: (718) 679-9196
stan@srlawonline.com

Portfolio Recovery Associates, LLC

140 Corporate Blvd., Norfolk, VA 23502

PRO FINANCIAL SERVICES, LLC
PO BOX 18475 THE WIL

Account Reference No. 30600000000000000000

Balance: \$3,433.42

03/31/2011

PRA'S TAX TIME DISCOUNTS!

Take advantage of our tax time discounts. We want to help you resolve this debt. These savings won't last long so **CALL NOW** to take advantage of these limited time offers!

Pay the Full Balance	Tax Time Discount Options
<p>Pay now: \$3,433.42</p> <p>• 6 Monthly Payments of \$575.57</p> <p>• 12 Monthly Payments of \$292.79</p> <p>Your account will be considered "Paid in Full" once your account reaches a zero balance.</p>	<p>• Pay over \$2,075.00 SAVE \$1,358.42</p> <p>• Pay \$375.00 for 6 consecutive months SAVE \$1,203.42</p> <p>• Pay \$205.00 for 12 consecutive months SAVE \$1,001.42</p> <p>Your account will be considered "Settled in Full" after your final payment is posted. You owe nothing more.</p>

- Your first payment must be received **NO LATER** than **03/31/2011**.
- If you satisfy the terms of this offer, no further interest will be charged to you.

We've helped many people catch up on their debt. If you **CALL NOW** and take advantage of the **INCREDIBLE SAVINGS** we are offering you, our specialists are ready to help resolve your account.

<p>3 Just call 1-800-772-1413 before 03/31/2011</p> <p>To discuss the AFFORDABLE PAYMENT OPTIONS that are available to you: 7:30 AM to 6 PM Mon-Fri, 7:30 AM to 5 PM Sat, 12 PM to 6 PM Sun</p> <p>2 Mail all checks and payments to: PORTFOLIO RECOVERY ASSOCIATES, LLC P.O. Box 1234 Norfolk, VA 23501</p>	<p>1 Make your Payment Online!</p> <p>www.portfoliorecovery.com</p>
--	---

We are not obligated to honor this offer. Interest continues to accrue on this account until the account is satisfied. Unless interest has been suspended, the above balance includes interest as of the date of this letter. You may contact us to obtain an exact payoff amount for a future date.

Company Address: Portfolio Recovery Associates, LLC, 120 Corporate Blvd., Norfolk, VA 23502

Dispute Correspondence Address: 140 Corporate Blvd., Norfolk, VA 23502 or E-mail: PRA_Disputes@portfoliorecovery.com

Credit Card Payments: Third party vendors may charge a transaction fee for processing payments made by credit card; however, PRA does not charge or accept any fees. Please discuss this option with our staff if you have any questions.

QUALITY SERVICE SPECIALIST AVAILABLE MON - FRI 9 AM TO 6 PM (EST)

If you have any questions or need help, our company strives to provide professional and courteous service to all of our customers. Contact our specialists to discuss issues related to our quality of service to you by phone at 1-800-772-1413 or by e-mail at quality@portfoliorecovery.com.

PRIVACY NOTICE

We collect certain personal information about you from the following sources: (a) information we receive from you; (b) information about your transactions with our affiliates, others or us; (c) information we receive from consumer reporting agencies. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic information about you to those employees and entities that need to know that information in order to collect your account. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

This letter is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

We are required under state law to notify consumers of the following rights. This list does not include a complete list of rights consumers have under state and federal laws.

(NEW YORK CITY: City of New York license Number 1006894)